**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1120 of 2001**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.S.SHAH**
**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DINKAR INDUPRASAD JOSHI - Appellant(s)**
**Versus**
**CHAMANJI DHARMAJI THAKOR & 5 - Defendant(s)**

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**Appearance :**
MR YM THAKKAR for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 4, 6,
DELETED for Defendant(s) : 5,
MS AVANI S MEHTA for Defendant(s) : 6,

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**

**and**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 05/03/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

This appeal has been filed by the original claimants seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal((Main), Nadiad, in MACP No. 1266/1989 by judgement and award dated 10th July, 2000.

2. On 18th May, 1989, the appellant received serious bodily injuries in a vehicular accident when the Maruti car in which he was travelling collided with the truck insured by the United India Insurance Co.-opponent no.6 herein.

3. The appellant claimant therefore, filed claim petition being MACP No.1266/1989 before the Claims Tribunal seeking compensation of Rs.6,00,000/- from the driver, owner and insurer of the offending truck.

4. With respect to the nature of accident, the fact that the appellant received bodily injuries in the said accident and that accident occurred on account of negligent driving of the truck, there is no dispute raised before us since the opponent no.6 insurance company has neither challenged the judgement and award passed by the Claims Tribunal nor filed the cross appeal against the appeal filed by the claimant for enhancement of compensation. To these aspects of

the matter, we may not advert to at any length. The appellant seeks enhancement of compensation from Rs.1,61,000/- awarded by the Claims Tribunal by impugned judgement and award.

5. Before the Tribunal, the claimant led evidence to establish that he was a business man and that from his involvement in the business, he had received profit of Rs. 33,000/- in his share.

6. With respect to the nature of injuries, the claimant produced medical evidence in two parts. The claimant had received several injuries on different parts of the body. He had also received serious injury to his right eye. For injuries other than one received by him on his eye, the claimant examined one Dr. Sanjay Champaklal Shah at exh.44 and also produced disability certificate dated 25-11-1997 given by the Doctor. As per his deposition, the claimant had suffered permanent partial disability to the tune of 19% for the body as a whole. Doctor opined that the claimant had 20% loss of power of right ankle, 15% loss of range of motion of right ankle and he also had chronic Back pain due to residual 25% compression of D6 vertebra. The medical evidence thus suggested that the claimant had suffered permanent partial disability to the extent of 19% for the body as a whole taking into account the above injuries. The Doctor in his certificate specifically

opined that for disability of right eye vision, separate assessment by Ophthalmologist is necessary. The claimant also examined Dr. Sudesh Manohar Rao who is an Ophthalmologist at exh.46. He also produced certificate dated 12th December, 1997. In his deposition as well as in the Certificate in question, the Doctor opined that the claimant had lost 90% vision of his right eye. He therefore, assessed total loss of vision of the claimant at 35%.

7. On the basis of evidence regarding income and disability, the Tribunal proceeded to asses compensation awardable to the claimant. The Tribunal came to the conclusion that the income of the claimant should be accepted at Rs.2500/- per month. The Tribunal applied total disability of 20% of the body as a whole. Considering the age of the claimant being 30 years, the Tribunal adopted multiplier of 15. The Tribunal thus found that appellant should be compensated at the rate of Rs.500/- per month(Rs.2500x20%) i.e. Rs.6,000/- per annum(Rs.500x12). Applying multiplier of 15, the Tribunal awarded compensation of Rs. 90,000/- for future loss of income. The Tribunal also awarded certain other amounts as follows :

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| Rs.10,000/- | for actual loss of income |
| Rs.25,000/- | for pain, shock, suffering and loss of amenities of life. |
| Rs.28,500/- | for medical expenses and treatment |
| Rs.7,500/- | for attendant charges, special |

diet, transportation

The Tribunal thus awarded total compensation of Rs.1,61,000/- with proportionate costs and interest at the rate of 12% from the date of claim petition till realisation.

8. Before us, learned advocate Mr. Thakkar for the appellant claimant submitted that the Tribunal gravely erred in not taking into consideration the prospective rise in the income of the claimant. He submitted that the disability of 20% assessed by the Tribunal is also not sufficient and is contrary to the medical evidence on record. He submitted that the multiplier for claimant aged 30 years also ought to have been 17 instead of 15 adopted by the Tribunal.

9. On the other hand, learned advocate Ms. Avni Mehta for opponent no.6 insurance company opposed the appeal. She submitted that the Doctor examined by the claimant at exh. 44 and 46 had not treated the claimant and had only given disability certificates. She submitted that there was no documentary evidence regarding the actual income of the claimant. She submitted that the award passed by the Tribunal being just and reasonable, calls for no interference.

10. Having heard learned advocates appearing for

the parties and having perused the documentary as well as oral evidence on record, we find that the claimants had produced necessary material to establish that even on the date of accident his yearly income was in the vicinity of Rs. 3,000/- per annum. The claimant who was a young man aged 30 years was self employed and was doing his business. His monthly income could have been assessed at Rs. 3,000/- per month. The claimant had agencies for Soda Ash and blade. He had produced accounts to show that in a year he had earned profit of Rs. 33,000/-. Thus, even totally ignoring his potential to earn more in future, his income of Rs. 3,000/- for assessment of future loss of income can be safely adopted.

11. With respect to his disability, as noted earlier, at exh.44, Dr. Sanjay C. Shah had clearly stated that the claimant had suffered disability to the extent of 19% for the body as a whole taking into consideration his injuries to the ankle and his chronic Back pain. He had specifically stated in the disability certificate dated 25th November, 1997 that disability for loss of vision needs to be assessed separately. Therefore, there was no reason for the Tribunal to discard this evidence and ignore Doctor's opinion that the claimant had suffered permanent partial disability of 19% for the body as a whole, even ignoring his loss of vision in the right eye. Additionally, the

claimant produced medical evidence in the form of deposition of Dr. Sudesh Manohar Rao and his certificate dated 12th December, 1997 clearly establishing that the claimant had lost vision of the right eye to the extent of 90%. There was nothing to doubt or dispute this testimony also. The medical evidence suggested that such loss of vision would work out at 35% disability of the body. Referring to the First Schedule to the Workmen's Compensation Act also, we find that in such cases the legislature has prescribed disability of 30% for the body as a whole in cases of loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal. In the present case, when the claimant had lost virtually his total vision in his right eye, his disability arising therefrom could have been taken at 30% of the body as a whole.

12. Considering the above aspects of the matter, combined total disability of the appellant claimant for the body as a whole would come to 49%. Rounding off the same to 50%, his loss of future income shall have to be worked out accordingly.

13. As noted, accepting Rs. 3,000/- per month as his income, loss of future loss of income therefore would be Rs.1500/- per month i.e. Rs. 18,000/- per annum. Considering the age of the

claimant being 30 years on the date of accident, multiplier of 17 in facts of the case would be justified. The claimant would thus receive a sum of Rs. 3,06,000/- (Rs.1500x12x17) under the head of future loss of income. Remaining amounts awarded by the Tribunal for loss of actual loss of income, for pain, shock and suffering and amenities of life, medical treatment etc. remain unchanged.

14. We are unable to accept the submission of learned counsel for the insurance company that since the Doctors who had given disability certificate had not treated the claimant earlier, they were not competent to give such certificate or that such certificate by that account alone should be discarded. Nothing has been brought on record in the cross examination of Doctors concerned or through any other independent material to suggest that the disability assessed by the Doctors did not confirm to the actual injuries and permanent disability suffered by the claimant.

15. We are also unable to accept the contention of leaned counsel for the insurance company that the appellant being a business man despite his physical limits, would suffer no serious reduction in his earning capacity. The claimant was aged 30 years on the date of accident. On account of his physical impairment which

included restriction in his movement, Chronic Back pain and virtual loss of vision in one eye, his ability to do his business energetically and to expand the business would certainly receive a serious set back. In that view of the matter, disability assessed by medical experts would certainly reflect in the diminishing earning capacity of the claimant.

16. Considering all these aspects of the matter, we are of the opinion that the award passed by the Claims Tribunal has to be enhanced in the above terms.

17. In the result, the appellant shall receive a total compensation as follows :

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| Rs.3,06,000/- | for future loss of income |
| Rs.10,000/- | for actual loss of income |
| Rs.25,000/- | for pain, shock, suffering and loss of amenities of life. |
| Rs.28,500/- | for medical expenses and treatment |
| Rs.7,500/- | for attendant charges, special diet, transportation |
| ---------- | |
| Rs.3,77,000/- | total compensation |

The enhanced amount of compensation i.e. Rs.2,16,000/-(Rs.3,77,000 – Rs.1,61,000) shall carry interest at the rate of 9% per annum from the date of claim petition till realisation.

18. Opponent no.6 insurance company shall deposit the additional amount of compensation awarded under this appeal before the Claims Tribunal by

16th April, 2007.

19. Considering the fact that the claimant would now be aged about 48 to 50 years, that the accident took place way back in the year 1989, that the claimant is not an ignorant or illiterate person and is himself involved in the business, out of the amount of compensation to be deposited by the insurance company before the Tribunal, 50% thereof shall be disbursed in favour of the claimant through Account Payee cheque.

Remaining 50% shall be invested in fixed deposit in any nationalised bank near the residence of the claimant for a period of three years with usual conditions about prohibition against premature encashment of/encumbrance over the deposit, permission to the claimant to withdraw interest periodically accruing on the fixed deposit and a direction to the bank not to permit the bank accounts of the claimant to be operated by any power of attorney holder other than a close relative of the claimant.

20. With these directions, First Appeal is disposed of.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)